



April 9, 2002

Mr. James M. Whitton
Bracket & Ellis
100 Main Street
Fort Worth, Texas 76102-3090

OR2002-1756

Dear Mr. Whitton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160998.

The Springtown Independent School District (the "district"), which you represent, received a request for the names, addresses, and telephone numbers for "the people being forced to pay tuition for there (sic) childred (sic) to attend public schools." The request also seeks a map of the district and outlying areas, the amount of tuition charged to these parents in the past five years, the formulas required by the Texas Education Agency, and the formulas used by the district. Finally, the request seeks a copy of one of the district's complaint forms and "something in writing stating that this district understands that sending my two sons to a school 26 miles north of my home will deprive my 17 year old of graduating with his class of 2002 and will also deprive my 14 year old of being able to participate in any school function such as basketball, football, baseball, etc." You state that you will provide some of the requested information to the requestor, but that you have no document stating that the district understands the consequences that the requestor alleges his children will suffer if they are not able to attend the district's schools.¹ You also claim that the submitted document is excepted from disclosure under sections 552.026, 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The district asserts that the submitted information must be withheld pursuant to sections 552.026, 552.101, and 552.114 of the Government Code. The Family Education Rights and Privacy Act ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally

¹We note that the Public Information Act (the "Act") does not require a governmental body to prepare new information in response to a request. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex.App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975).

identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. *See* Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows: "This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]."

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution must withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded must withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In this instance, however, you have submitted the document at issue to this office for consideration. Therefore, we will consider whether this document contains information that is excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). The information at issue directly relates to students. We note, however, that FERPA provides the requestor a right of access to information that identifies the requestor's children. *See* 20 U.S.C. 1232g. Therefore, with the exception of the information that identifies the requestor's children, the district must withhold the student identifying information pursuant to FERPA. We have marked the types of student identifying information that must be withheld. All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 160998

Enc: Submitted documents

c: Mr. Eddie McCaslin
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Springtown, Texas 76082-4255
(w/o enclosures)